tax as a violation of the Fifth Amendment. *Held*, that the tax is constitutional. *United States* v. *Bennett*, 34 Sup. Ct. 433.

For a discussion of the constitutional restrictions on taxation, see this issue of the REVIEW, p. 675.

TORTS — DAMAGE TO CONTRACT RIGHT BY ACT OF THIRD PARTY — RIGHT OF ACTION FOR SEDUCTION OF FIANCÉE. — The defendant seduced the plaintiff's affianced wife. The plaintiff sues, alleging that the defendant "maliciously interfered with the marriage contract then subsisting, causing the plaintiff properly to break it." The defendant demurs. *Held*, that the demurrer be sustained. *Davis* v. *Condit*, 144 N. W. 1089 (Minn.).

A promise to marry creates a certain confidential relation above that of the ordinary relation of promisee and promisor. *Kline* v. *Kline*, 57 Pa. St. 120; *Ward* v. *Ward*, 63 Oh. St. 125, 57 N. E. 1095. But a man has no right to the services of his fiancée, and it seems clear that there is no such status as to give the man a right of action for interference with it, analogous to the action for criminal conversation. However, chastity is at least an implied condition in a contract to marry, and the woman's lapse excuses the man's performance. *Irving* v. *Greenwood*, 1 Car. & P. 350; *Von Storch* v. *Griffin*, 77 Pa. St. 504. Accordingly the plaintiff should have an action against the defendant who has intentionally (or maliciously) deprived him of the benefit of a contract, by preventing the happening of the condition. *Cf. Morgan* v. *Andrews*, 107 Mich. 33, 64 N. W. 869; *Chipley* v. *Atkinson*, 23 Fla. 206, 1 So. 934. It is submitted, moreover, that the woman impliedly promised to remain chaste. See *Sheahan* v. *Barry*, 27 Mich. 217, 222. Therefore a lapse from virtue is a breach of contract and should give the man a right of action against the fiancée and consequently also against one who has intentionally procured the breach. *Lumley* v. *Gye*, 2 El. & Bl. 216; *Walker* v. *Cronin*, 107 Mass. 555. Regarding the defendant's conduct either as the preventing of the happening of a condition or as the procuring of a breach, this result seems clear on authority, provided that the defendant acted intending to interfere with the contract. It is hard to see on principle why the same result should not follow in any case where the defendant acts knowing of the contract, or even when he ought to know of it, but the authorities seem to stop short of this. See 24 HARV. L. REV. 397. However, it has been suggested that to allow an action against a third party who has been instrumental in causing a breach of a contract to marry would be "subversive of proper liberty of marriage" and would "degrade rather than add to the sanctity of the marriage relation." Editorial in N. Y. L. J. Volume L, at p. 2884.

TORTS — UNUSUAL CASES OF TORT LIABILITY — NEGLIGENT INTERFERENCE WITH PROBABLE EXPECTANCY OF BUSINESS. — The neighborhood around the plaintiff's grist mill was depopulated because of malaria arising from waters backed up by the defendant power company's dam. The plaintiff sues for the loss of business due to the departure of his customers. *Held*, that he cannot recover for this. *Central Ga. Power Co.* v. *Stubbs*, 80 S. E. 636 (Ga.).

Any one who has been injured by another acting intentionally and without justification may recover for the injury inflicted. See *Skinner & Co.* v. *Shew*, [1893] 1 Ch. 413, 422; *Aikens* v. *Wisconsin*, 195 U. S. 194, 204. This general principle is illustrated by the actions for intentionally procuring a breach of contract and for an intentional interference with a probable expectancy of business, where the specific injury does not fall within any of the historical categories of tort liability. *Lumley* v. *Gye*, 2 E. & B. 216; *Jersey City Printing Co.* v. *Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230. The duty to use due care to avoid causing unintended harm to others should in any symmetrical system

be equally comprehensive. See POLLOCK ON TORTS, 9 ed., 22 *et seq.*; s. c. SALMOND ON TORTS, 3 ed., 24. If recovery may be had for a certain injury, when it is intentionally inflicted, it should likewise give rise to an action when it is caused by negligent conduct. Consequently there seems no rational explanation for the refusal of most courts to allow recovery against one who fails to use due care in a situation where it is foreseeable that such failure will jeopardize another's contract rights. *Anthony* v. *Slaid*, 52 Mass. 290; *Byrd* v. *English*, 117 Ga. 191, 43 S. E. 419. The principal case invites the same criticism. The court would not refuse to take cognizance of this sort of damage if it were intended. The foreseeability of harm to a class of which this plaintiff is one, raised a duty to abstain from certain conduct; and persistence in it is the direct cause of the very injury which was foreseeable. *Metallic Com. Co.* v. *Fitchburg R. Co.*, 109 Mass. 277. The refusal of most courts to apply the general principle here suggested is due to a conservative dread of extending liability and stimulating litigation. But there would seem to be no ground for such fears, if recovery is limited to situations like that disclosed in the principal case, where the duty and the causation are clear.

TRANSFER OF STOCK — COLORABLE ASSIGNMENT TO QUALIFY ASSIGNEE AS DIRECTOR: RIGHTS OF CREDITORS OF ASSIGNEE. — The plaintiff caused one share of her stock in a corporation to be registered in the name of her son-in-law in order to make him eligible to the office of director under a statute requiring directors to be stockholders. The defendant attached the share of stock with the corporation as the property of the registered holder. The plaintiff, alleging she is the beneficial owner, seeks to enjoin the attachment. *Held*, that the injunction be granted. *Gray* v. *Graham*, 89 Atl. 262 (Conn.).

Ordinarily in a contest between a creditor of the registered owner of stock and one who has the beneficial interest, the latter is preferred. *Broadway Bank* v. *McElrath*, 13 N. J. Eq. 24; *Lund* v. *Wheaton Co.*, 50 Minn. 40, 52 N. W. 268; *Hazard* v. *National Exchange Bank*, 26 Fed. 94. This view is a consequence of the almost universal rule that an attaching creditor is not a *bonâ fide* purchaser. Moreover, quite apart from this rule, the doctrine would be justified by the demands of business convenience. Of course, the creditor cannot claim to have been misled by the form of registration, since the stock books are for the information of the corporation only. There is no common-law rule that a director be a stockholder. *Wright* v. *Springfield & New London Railroad Co.*, 117 Mass. 226. At the present time, however, this is almost universally required by statute or by-laws. It is held in several jurisdictions that this means only that a director must be the registered owner. *In re Ringler*, 145 App. Div. 361, 130 N. Y. Supp. 62; *Pulbrook* v. *Richmond Consolidated Mining Company*, 9 Ch. Div. 610. Other jurisdictions require that the director be the beneficial owner, since the purpose of the provision is to insure the election of men whose interests will induce them to conduct the business for the benefit of the corporation and to prevent the election of mere dummies doing the will of concealed principals. *Bartholemew* v. *Bentley*, 1 Oh. St. 37. If the latter view is correct the plaintiff, in the principal case, by his conduct, participated in the violation of the policy of the law, and on the familiar principle of clean hands he should have no relief in a court of equity. Most of the cases holding the contrary view involve the breach only of a by-law. In such a case it might be said that there is a wrong to the corporation only and that no third party should be allowed to take advantage of it collaterally. *Cooper* v. *Griffin*, [1892] 1 Q. B. 740; *In re The Blakely Ordnance Company*, 25 W. R. 111. *Lanzan* v. *Francklyn*, 20 N. Y. Supp. 404 (City Ct., Brooklyn). But in the principal case, although the violation of a statute is involved, the court, while deliberately denouncing the action of the plaintiff as a wrong to the public